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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

To: The Commission)

COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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SUMMARY

The National Cable Television Association, Inc. ("NCTA"), whose members are the most likely facilities-based competitors to the incumbent local exchange carriers ("LECs"), is vitally interested in the establishment of conditions for full and fair competition in the local exchange marketplace. One such condition is a universal service fund ("USF") scheme that is nondiscriminatory and competitively neutral and does not impede the development of local exchange competition by imposing substantial burdens on new entrants.

In these comments, NCTA addresses critical issues the Commission and Joint Board must resolve in developing the universal service regime called for by the Telecommunications Act of 1996. Basic telephone service is an essential service, and subsidies may be necessary to ensure that it remains affordable to low-income subscribers and those in rural, insular and high-cost areas. As the 1996 Act contemplates, the current subsidy mechanisms must be changed because they inhibit competition. A new solution must be found -- it must be technology-neutral, allow all providers to participate, and not impose excessive subsidy costs on carriers or ratepayers. We see this proceeding as an essential first step toward the ultimate goal of phasing out the existing subsidy programs which result in dollar flows to the incumbent LECs that are not necessary to ensure universal service and serve to harm competitors and competition.

Competition in the local exchange market need not be -- and should not be -- antithetical to universal service. Indeed, competition should drive prices toward cost, thus promoting access and affordability. Universal service can be preserved and enhanced through an explicit, carrier-neutral support program that is funded by all telecommunications carriers; that allows all telecommunications carriers who play a part in delivering universal service access to the fund;

and that places an independent third party in charge of the administration of the fund. Payments from the fund should be tied to the extent contributors provide universal service to eligible citizens. Whatever funding approach is ultimately decided upon, it should be equitable to the ratepayer, the incumbent carrier, and new entrants and result in the provision of subsidized service at the least cost to society.

In these comments, NCTA makes a number of points, including:

- The list of “core” services described in the NPRM should receive universal service support in rural, insular and high-cost areas because each meets each and all of the statutory criteria in the 1996 Act.
- At this time, no other services meet the statutory criteria (particularly the requirement that they “have, through the operation of market choices by consumers, been subscribed to by a substantial majority of residential customers”) and therefore no additional services are currently entitled to universal service support.
- As a general matter USF support in rural, insular and high-cost areas should be provided to residential users only.
- A proxy model should be used to determine USF support levels. The Joint Sponsors’ Benchmark Cost Model is currently the best available model although it requires correction in some particulars because it overstates the size of the required subsidy.
- Low-income consumers should receive support for the same “core” services that consumers in rural, insular and high-cost areas receive, although the funding mechanism should be separate from that used for the general USF.
- Core services which are supported by universal service funds should also be made available to eligible schools, libraries, and health care providers, but the Commission must not mandate use of a particular technology to achieve its goals.
- Net, rather than gross, revenues from telecommunications services should be the basis for assessing USF contributions.
- The universal service funds should be administered by an independent entity, in a competitively neutral manner, free of the control or influence of the incumbent LECs.

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**COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby files its Comments in response to the Commission's Notice of Proposed Rulemaking and Order Establishing Joint Board¹ in the above-captioned proceeding.² NCTA is the principal trade association of the cable television industry in the United States and represents cable television operators serving over 80 percent of the nation's television households.

I. INTRODUCTION

This proceeding is one of the first to be initiated by the Commission to implement provisions of the Telecommunications Act of 1996.³ NCTA and its member companies

¹ In the Matter of Amendment of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93, released March 8, 1996 ("NPRM").

² NCTA filed comments in the Commission's CC Docket No. 80-286 universal service rulemaking proceeding and, to the extent relevant to issues in this proceeding, we incorporate those comments by reference herein. See Comments of the National Cable Television Association, Inc., CC Docket No. 80-286, filed October 10, 1995, in CC Docket No. 80-286, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 95-282, released July 13, 1995 ("USF NPRM").

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("the 1996 Act").

vigorously supported passage of that legislation because its primary thrust was to eliminate barriers to entry into various telecommunications markets, particularly the local exchange market. Cable television systems are the most likely facilities-based competitors to the incumbent local exchange carrier ("LEC") monopolies.⁴ Accordingly, NCTA's members are vitally interested in the establishment of conditions for full and fair competition in the local exchange marketplace, one such condition being a universal service scheme that is nondiscriminatory and competitively neutral and does not impede the development of local exchange competition by imposing substantial burdens on new entrants.

As discussed herein, affordable telephone service in rural, insular, and high-cost areas must remain a high priority and should be achieved in a manner consistent with the competitive objectives of the 1996 Act. To date, service in these areas has been underwritten primarily by subsidies, explicit and implicit. The cable industry supports policies to ensure that citizens in these areas have access to affordable basic service through the use of appropriately targeted subsidies. Similarly, support for low-income consumers, schools, libraries and health care providers (particularly in rural areas) will be given close Joint Board attention. The proper scope, implementation and administration of a new comprehensive universal service fund must be carefully designed to avoid unnecessarily subsidizing incumbent LECs or placing unwarranted burdens on new entrants, thereby undermining competition.

⁴ This is so for a number of reasons: Cable systems pass over 96 percent of American homes with coaxial cables which have the capacity to carry up to 900 times as much information as the local phone company's twisted pair. Cable companies are leaders in the use of fiber optic and digital compression technology. And cable's high-capacity systems will ultimately deliver virtually every type of communications service conceivable, offering consumers competitive choices for advanced voice, video, and data services. Congress recognized as much in the legislative history of the 1996 Act. See Conference Report at 148.

We urge that, consistent with the intent of Congress, the Joint Board should be guided by the following general principles. First, all telecommunications providers should pay a fair share of the cost of universal service. Second, universal service subsidy funds should be available to any provider that is willing to deliver universal service in a designated area. Third, core universal services should be defined consistent with the statutory factors, especially the requirement (47 U.S.C. § 254 (c)(1)(B)) that any components of universal service should, by market forces, have been subscribed to by a “substantial majority of residential customers,” and the Commission must be judicious in designating additional services for universal service treatment. Fourth, any universal service fund should be calculated carefully to avoid imposing unnecessary burdens on consumers and jeopardizing the growth of competition. Finally, while states are permitted to adopt universal service rules “not inconsistent with” the Commission’s rules (47 U.S.C. § 254 (f)), this authority should be narrowly construed to avoid a profusion of such programs which could adversely affect the development of competitive local exchange markets.

II. GOALS AND PRINCIPLES

Initially the Commission asks for comment on the seven principles in the Act upon which universal service policies should be based. We agree that all of the congressionally mandated principles must be considered in formulating universal service policies. In particular, the means of distributing universal support must be competitively neutral.

The NPRM seeks comment on whether there are appropriate measures that could help in assessing whether “affordable” service is being provided to all Americans. Telephone service, even including long distance service, generally comprises a small percentage of a household’s expenditures per month. The high rates of telephone penetration today demonstrate that telephone service is very affordable, and competition is likely to promote affordability for most

consumers in most areas of the nation. Moreover, the absence of any direct linkage between price and demand for the overwhelming majority of the residential population suggests that even prices at the high end of the existing range⁵ are still affordable. Therefore, the Commission can readily conclude that current rate levels for widely-used services are “affordable” for purposes of the universal service rules.

The NPRM also seeks comment on the Act’s four statutory criteria for determining which services should be supported by universal service mechanisms.⁶ In particular, the Commission asks whether a given service must meet all four criteria to be deemed part of universal service. We think it plain that the use of the conjunctive “and,” rather than the disjunctive word “or,” in the list of criteria indicates a service must meet each and all of the criteria to be included within the definition of universal service. Even under the most liberal reading, all of the criteria must -- at a minimum -- be considered when establishing the services to be supported.

III. SERVICES TO BE SUPPORTED IN RURAL, INSULAR AND HIGH-COST AREAS

The NPRM asks for comment on a proposed “core” group of services for which universal service support should be provided to ensure access by consumers with low incomes or in rural, insular and high-cost areas and whether any additional services should be included. As a

⁵ Residential exchange rates vary widely both within and across jurisdictions. Except in certain extraordinary cases (certain small, rural independent LEC exchanges, and in areas requiring special construction), the highest monthly rate for basic residential access/local flat-rate usage is in the \$30 range. Lande, James, FCC Reference Book: Rates, Price Indexes, and Household Expenditures for Telephone Service, July 1994, Appendix 4.

⁶ The four criteria are the extent to which the telecommunications services: (1) are essential to education, public health or public safety; (2) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (3) are being deployed in public telecommunications networks by telecommunications carriers; and (4) are consistent with the public interest, convenience and necessity. 47 U.S.C. § 254 (c)(1).

general matter, NCTA agrees that the proposed list of “core” services should include: (1) voice grade access to the public switched network (“PSN”); (2) touch-tone; (3) single party service; (4) access to emergency services (911); and (5) access to operator services. Each of these services evidently meets each of the statutory criteria in Sections 254(b) and 254(c)(1). The performance level for voice grade service should be based on NARUC’s service quality index or evaluated with reference to state performance standards for such service.

Access to emergency services presents at least one question. While access to basic 911 service is a “core” service and must be supported, access to E911 services raises different issues. Support for such advanced services will likely increase the subsidy to rural LECs, many of which do not currently have E911 because the service is expensive to retrofit.⁷ This is an issue that warrants further Joint Board consideration.

The NPRM asks whether additional services should receive universal service support in insular, rural and high-cost areas. We believe there are no other services that satisfy each and all of the criteria of Sections 254(b) and 254(c)(1) -- particularly the requirement that they “have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.” Expanding the list to include other services could act as a barrier to entry for competing LECs (“CLECs”) because it may force unwarranted subsidies onto competitors or give incumbent LECs control over an even greater number of essential elements of the local exchange. The Commission must be scrupulous in ensuring that network elements, features and functions essential to CLEC provision of universal services are fully unbundled, priced based on cost, and that CLEC access is guaranteed.

⁷ Although E911 centers are generally funded by customer surcharges payable to the county or other local governmental authority, the telephone company must have the capability to provide the Automatic Number Identification (ANI) and Automatic Location Identification (ALI) which may require switch or other upgrades.

Finally, the NPRM asks specifically about interexchange services. While access to interexchange services may well meet the statutory criteria, toll service itself should not be included in the definition of universal service and toll restriction services should be allowed where necessary to keep subscribers on the network. Other additional services cited (e.g., data transmission capability, SS-7 features), should not now be supported services; they do not meet the statutory criteria for inclusion and the required subsidies would place an unfair and unacceptable burden on new entrants.

IV. IMPLEMENTATION OF SUPPORT

A. Who Should Receive Support in Rural, Insular and High-Cost Areas?

As a general matter, support should be provided only to residential users. Services other than a primary line to a principal residence should not be supported since this can only lead to a bloated subsidy fund which will not serve the purposes of the 1996 Act. Even in rural areas, support may not be necessary for most single line business users who are in the downtown core of such areas and probably are not as expensive to serve as are the outlying residential customers.

In this regard, the NPRM asks for comment on how to determine what are “affordable” rates and rates which are “reasonably comparable” to rates charged for similar services in urban areas. As discussed above, at a minimum, the basic rate currently paid by the majority of subscribers for core services should be deemed an “affordable” rate for universal service purposes. The “reasonably comparable” urban rate can be derived by taking the rates in the nearest urban area (or two areas) for comparison purposes.

B. How Should Support Be Calculated?

Once the services to be supported and the beneficiaries of that support in rural, insular and high-cost areas are defined, the subsidy level must be calculated. The method ultimately adopted must be “as simple to administer as possible, technology neutral, and designed to identify the minimum subsidy required to achieve the statutory goal of affordable and reasonably comparable rates throughout the country.” NPRM at ¶27. The methodology used to calculate the subsidy must “be equitable and non-discriminatory in the burden it imposes upon contributors, and its distribution procedures should be direct, explicit and specific” (*id.*), consistent with the pro-competitive purposes of the Act.

1. Existing Funding Mechanisms

As the NPRM suggests, existing funding mechanisms, including the universal service fund (“USF”) and DEM weighting, give incumbent LECs advantages over new entrants and are not the type of explicit support mechanism contemplated by the 1996 Act. For this reason, use of Part 36 separation procedures to support a USF and use of DEM weighting should be phased out as quickly as possible, as we urged in our comments on the USF NPRM.

2. Proxy Models

A proxy model should be used to determine the level of assistance to high-cost and other areas requiring support. To allow, if not promote, competition in high-cost areas, cost information for universal service purposes must be competitively neutral. The revenue or support target used should only be as high as necessary to attract the entry of efficient providers of local exchange services. The cost data should be from a study based not on the characteristics of the incumbent LEC, but rather on efficient operating procedures of an anonymous entrant focusing on the local exchange market. The cost study should be based on deployment of the

least cost technology as well as efficient operating and maintenance practices and costs.

Therefore, a proxy cost study reflecting efficient industry standards should be conducted.

The Commission has recognized that basing assistance on LECs' reported costs does not necessarily direct assistance to areas that are inherently expensive to serve. As it observed in the USF NPRM (at ¶55), many have argued that “determining assistance on the basis of LECs’ reported costs results in areas with similar characteristics being treated differently, depending on the management decisions of the carrier serving each area.” It concluded “[a] high-cost assistance program based solely on reported costs, therefore, provides no incentives for efficient operation.” *Id.* Such a methodology also provides the opportunity for LEC manipulation of the very cost figures upon which its subsidies are based.

The use of proxy factors has a number of advantages over the use of LEC reported costs. First, proxy factors shift USF support away from high-cost companies per se and toward geographic areas that fit the high-cost profile without regard to the average loop costs of the company providing the service. Second, it furthers the Congressional and Commission policy of competitive neutrality. Third, it enables the Commission to “target assistance to the parts of a study area for which the projected cost of service is inherently higher than average, even if the study area, as a whole, does not have above-average costs per line.” *Id.* Fourth, the proxy methodology is consistent with use of disaggregated geographic areas because it could use publicly available data for such areas, while LECs do not generally report their costs on that basis. Finally, because increased costs will not result in increased USF assistance, proxies will encourage cost control and thus downward pressure on rates.

While we generally support the use of a proxy model and the rationale upon which it is based, we stress that the assumptions underlying the various proxy models proposed by the “Joint Sponsors” (MCI, NYNEX, US West and Sprint), and by Pacific Telesis must be

rigorously examined. Any and all information or data underlying the proposed proxy factors, proxy algorithms and engineering cost models must be placed on the record for examination and analysis by all parties.

An analysis of the proxy model advanced by the Joint Sponsors and a review of the Pacific Telesis model has been prepared by Economics and Technology, Inc. ("ETI") and is appended as Attachment A hereto. ETI finds that the Joint Sponsors' Benchmark Cost Model (BCM) is useful for determining high-cost areas. The BCM relies upon publicly available data, generally incorporates reasonable network engineering assumptions, and models forward-looking costs. However, the BCM in its present form has several shortcomings that can and must be remedied. When these corrections are made, the model yields a substantially smaller and more accurate universal service funding requirement.

The ETI Report analyzes and corrects several (but not all) of the key engineering/economic assumptions and input data upon which the BCM is constructed, and shows how these corrections affect the model's results. The Report concludes that the universal service funding investigations being conducted by various public utility commissions offer instructive information for the Joint Board. The Report also discusses how the results of the BCM should be used in universal service funding deliberations at both the state and federal levels.

Among the Report's key findings are the following: (1) the BCM overstates the average cost per residence line and overstates the USF requirement;⁸ (2) the existing sources of universal

⁸ In particular, the ETI Report concludes that certain key variables must be corrected if the BCM is to be adopted. For example, (1) outdated and overstated switch costs exaggerate the size of a USF. The model should be corrected to reflect more accurate switch costs; (2) by determining the need for USF support on a Census Block Group ("CBG") basis rather than a wire center basis, the BCM fails to recognize economies of scale and thus significantly exaggerates USF requirements. USF support should be evaluated on a wire center basis; (3) the model should be corrected to more fully reflect the presence of business lines so that feeder and distribution plant are sized correctly and so that CBGs

service support are not in imminent jeopardy; (3) the BCM results should be examined in tandem with an examination of various existing implicit and explicit sources of USF support and all local exchange company revenues associated with the provision of local exchange service should be considered in the determination of required support; (4) the model must be designed to examine the incremental cost of providing one and only one residential access line per household. (This restriction affects a number of the engineering assumptions that are provided to the model because, in practice, local telephone switching and distribution infrastructures are designed to satisfy more than the stand-alone demand for primary residential access lines). Finally, ETI shows that the Pacific Telesis Model is gravely deficient because, inter alia, it relies upon proprietary material.

3. Census Block Groups

As ETI suggests, although Census Block Groups may be appropriate for gathering data and determining high cost areas, they are not an appropriate basis for determining required support levels for universal service. This is because the use of CBGs to determine support levels would fail to recognize the economies of scale of serving several CBGs from a single wire center and thus significantly exaggerate USF requirements. Clearly, the use of study areas for developing a proxy model would be inappropriate because they essentially match up with an incumbent carrier's serving territory and cover much too wide an area to determine high-cost status. Disaggregation into areas such as wire centers would allow more narrow targeting of assistance. Importantly, use of such disaggregated areas will not disadvantage new entrants, whose service areas are unlikely to match up with incumbent carriers' study areas.

are classified in the appropriate density zone; (4) the model's algorithm for determining when to deploy fiber vs. copper in the feeder plant results in an overstated cost of local exchange service; and (5) the fill factors for the switch, distribution plant, and feeder plant should be increased.

Although it is appropriate to base assistance on costs determined at the wire center level, this should not be interpreted to mean that new entrants should be required to serve an entire wire center serving area to be allowed entry into the market. Facilities-based competitors, and in particular cable companies, are unlikely to have service areas matching LEC wire center boundaries. Particularly in rural areas, where government assistance has long been available to incumbents to subsidize network construction, requiring competitors to serve the incumbent's entire study area would unfairly exclude competitors from eligibility for universal service funds. Such a result is not compelled by the 1996 Act, which seeks to ensure universal service in the context of a competitive marketplace. See NPRM at ¶ 8 (citing Conference Report at 1).

4. Competitive Bidding

The Commission seeks comment on whether relying on a competitive bidding process to set the level of subsidies required in rural, insular and high-cost areas would be consistent with Section 214(e), which addresses the circumstances under which telecommunications carriers are eligible to receive universal service support. As a matter of law, we do not believe Section 214(e) or any other statutory provision prohibits the use of competitive bidding to set the level of USF subsidy. As a matter of policy, such an approach has merit because it would ensure a gradual reduction in USF funds and give new entrants a reasonable opportunity to receive funds, but it must await the entry of competitors in any particular market. The rules for such a regime must establish a non-discriminatory and competitively-neutral state certification process, reasonably-sized service areas and reasonable service requirements, in order to avoid the current pro-incumbent tilt.

It is important to distinguish between a competitive bidding process in which only one carrier may receive funds, and processes in which multiple carriers may receive funds. For instance, in the latter case, the required support level could be established through the use of the

BCM and subsequently competing carriers (in particular, those that may be more efficient) would be allowed to bid down the required support level by offering to serve customers while receiving a lower support amount. In such an instance the support level would be reduced for all carriers serving the prescribed area.⁹

5. Transition Issues

The current cap on the rate at which the USF may grow should be temporarily extended until the Joint Board and the Commission have completed deliberations and put a replacement funding mechanism in place.

C. Who is Eligible for Support?

The NPRM seeks comment on the eligibility requirements carriers must satisfy in order to receive universal service support for insular, rural and high-cost areas. Those are the carriers to be designated as “eligible telecommunications carriers” by the appropriate state commissions. While all willing carriers should be eligible, we agree some measures may be necessary to make sure the assistance is used for its intended purpose and, in particular, as Congress clearly intended, is not used to subsidize services that are subject to competition.¹⁰ One solution -- endorsed by NCTA in its comments on the Commission’s USF NPRM rulemaking -- is to use high-cost credits or customer vouchers given to the service provider as previously proposed by the Commission. This could minimize carrier misuse of funding. In addition, to guard against cross-subsidy, stringent reporting requirements or cost allocation rules are appropriate.

In determining the required support level in rural, insular, and high cost areas, the Commission must ensure that all pertinent revenue offsets are considered. All revenues

⁹ Under the 1996 Act, a State may designate more than one eligible telecommunications carrier for a service area. See Section 214 (e)(2) of the Communications Act, added by the 1996 Act.

¹⁰ See Section 254 (k) of the Communications Act, added by the 1996 Act.

associated with the provision of local exchange service must be considered (including, but not limited to, custom calling revenues, intraLATA toll revenues, and access revenues generated by the provision of residential local exchange service). Finally, the Joint Board should seriously consider whether support is required for price cap LECs because they have the ability to retain earnings above cost so long as their prices remain below their caps.

V. SUPPORT FOR LOW-INCOME CONSUMERS

The NPRM addresses the separate question of support for low-income customers. It proposes that, at a minimum, those customers should receive support for the same core services designated for rural, insular and high-cost areas. As an initial matter, NCTA endorses that approach as well as continuation of the existing Lifeline and Link Up programs which provide support for low-income customers. We also agree with the suggestion that limited free access to the telephone company business office should be provided for current low-income telephone subscribers and customers should not be charged a message unit or per minute rate for such information if they utilize a measured rate service. This does not require universal service support, only that current subscribers not be charged for these calls.

It does not appear necessary, however, generally to provide subsidies for additional services for low-income consumers, such as free access for low-income consumers to information about telephone services subsidy programs and the like. Contrary to the suggestion in the NPRM, it is unclear why universal service support is necessary to encourage the provision of free information about these programs. The distribution of such information is unlikely to impose a significant cost burden and should be considered part of a carrier's general marketing expenses. Providing such information encourages subscribership by customers who produce a return on capital for the company; therefore, the distribution of such information should essentially pay for itself. There are more efficient options for distribution of information about

low-income programs, including printing such material in white or yellow pages directories and bill inserts, and use of social service agencies. If LEC-provided information is required, incumbent LECs should be required to make similar information about competitors' services available through their information distribution methods.

The NPRM also asks whether toll limiting services should be part of universal service for low-income subscribers. Toll limiting services may not strictly meet all of the statutory criteria, but can help promote universal service. As such, the Commission might encourage -- but not require -- the offering of such services to low-income subscribers without charge.

Optional interexchange calling plans for low-income customers should also be encouraged but not required. Such programs would help retain existing subscribers who would leave the network due to unpaid long distance bills they have accrued; lower interexchange rates might mean lower bills and less pressure to leave the network. But lower interexchange rates will not broaden local exchange subscribership since the interexchange rates themselves are not usually a deterrent. The problem is either insufficient creditworthiness (existing unpaid interexchange bills) or inability to afford deposit or service initiation charges.¹¹

The Commission next asks for comment on how to implement the support for low-income customers and who is eligible for support. Low income customers should be defined consistently across the country, rather than on a state-by-state basis, even though some state-to-state differences may exist (just as the cost of living and average income levels differ across states -- the annual income of \$10,000 in some areas buys much less than an income of \$10,000 in others). Therefore, for example, a definition such as "anyone living below the poverty level"

¹¹ Reduced service deposits also should be encouraged but not required, since required deposits usually take into account the anticipated toll bill (times two months). A customer who has chosen toll limiting service should be entitled to a lower deposit requirement. See NPRM at ¶58.

could be the federal definition, but the poverty level benchmark could differ from state to state. Regardless of the definition, revenues used for this purpose should be kept separate from the revenues used to subsidize service in insular, rural and high-cost areas. This will ease administration and better target the subsidies.

The actual subsidy necessary can likely only be determined after the fact: each year, quarterly or every six months, as appropriate, a true-up could occur which determines the number of customers making use of the subsidy and the total amount of the subsidy disbursed. For the initial funding requirement some estimation (based perhaps on current participation in the subsidy pool) would be necessary, followed by the true-up. Alternatively, carriers could simply report their Lifeline expenditures after the fact (subject to appropriate accounting safeguards) and the fund administrator could then bill each fund contributor the requisite amount. This would avoid the need to collect funds in advance and the subsequent true-up.

The Commission proposes to amend its rules to remove the Link Up provisions from its jurisdictional separations rules and to have the Link Up support mechanism be the same as that developed to support other services that receive federal universal service support. This proposal seems to make sense, since not all eligible carriers will be subject to separations, but it is critical that the support mechanisms remain competitively neutral.

VI. THE EVOLVING NATURE OF UNIVERSAL SERVICE

Congress recognized that the universal service concept will reflect an “evolving level” of telecommunications services. Indeed, one reason the definition of universal service can and should be limited now to a group of “core” services is the recognition that, over time, this list will expand. With this in mind, the NPRM asks a number of questions about how the “evolving” level of such services is to be implemented. Initially, we believe reviews every five years are appropriate. During that time, more competition will develop and the Commission can

incorporate the impact of competition on any further review. Too frequent reviews are administratively wasteful and will create an incentive to turn every review into an expansion of universal service, thus inflating fund demands. In conducting its periodic reviews, the Commission should rely on readily available information sources along with notice and comment procedures and not require voluminous reports from local exchange carriers. The Commission must consistently apply the standards in Section 254(c)(1) for determining which (if any) additional services should be supported.

We agree with the suggestion in the NPRM that technical standards for specific telecommunications services or carriers should not be required. Companies should not be required to report on performance standards to the Commission beyond ARMIS data and what the states may require. Finally, the Commission should continue its collection of subscribership data.

VII. SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS

A. Schools and Libraries

The NPRM addresses in detail the mandate that “elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services.” The cable industry has been in the forefront of providing communications facilities and services to schools and classrooms. The cable industry’s substantial contribution to the wiring of America’s schools and other public institutions is well-known.¹²

¹² For several years, the cable television industry has been working with educators to help them achieve their goals. Beyond the wide range of quality educational children’s programming made available through cable, local cable providers nationwide are connecting schools to cable service free of charge, contributing audio-visual equipment and satellite dishes at cost, buying copyright clearances on behalf of educators, and providing distance learning opportunities. They are also helping faculty and students to use new educational delivery technologies and programming to stimulate learning. Currently, more than 75% of our nation’s public and private K-12 schools receive over 500 hours per

The 1996 Act gives special emphasis to the delivery of services to schools, classrooms, and libraries. See 47 U.S.C. §§ 254 (b)(6), 254 (c)(3). As a threshold matter, NCTA agrees with the Commission's tentative conclusion to make "core" telecommunications services available to schools and libraries at the discount contemplated by Section 254 (h)(1)(B). In addition to these basic services, "special" telecommunications services provided to schools may be designated for universal service support. 47 U.S.C. § 254 (c)(3). In determining which, if any, additional telecommunications services to support, the Commission and the states must guard against mandating particular technologies and instead should adopt result-oriented goals. To do otherwise could unnecessarily discriminate against competitors to the incumbent LEC who offer different network architectures and superior technologies. In addition, the Commission and the states must establish realistic guidelines to ensure that the costs and benefits of service requests are adequately assessed.

The Commission is also required to establish "competitively neutral" rules "to enhance, to the extent technically feasible, access to advanced telecommunications and information services" for schools and libraries, in addition to the core and special telecommunications services already designated for universal service support. 47 U.S.C. § 254 (h)(2)(A). Notably, however, the statute does not contemplate such support for the services themselves. Rather, the Commission's mission is to develop competitively neutral rules to enhance access to these services, to the extent technically feasible and economically reasonable. In an increasing number of communities, cable companies are already providing this access. At least in those areas, there appears to be no need to designate access capacity for universal service support, although use of the incentives provided for in Section 706 of the 1996 Act may be appropriate.

month of commercial free educational television free of charge. More significant for purposes of this proceeding, over 100,000 schools nationwide, representing 73% of all schools and 81% of all

The NPRM seeks comment on the appropriate geographic area to be used for determining which carriers must provide support for particular schools and libraries, and on whether other technologies (e.g., wireless) may provide a more efficient means to deliver the designated services. The geographic area served by a particular company should be each company's self-defined service area. Wireless (as well as any other) technologies should not be precluded from consideration as the best available technology for delivering designated services; neither the Commission nor the states should mandate the use of a particular technology.

The NPRM next seeks comment on the establishment of the interstate discount for schools and libraries. A methodology involving the determination of incremental costs of providing service to each requesting entity, as suggested in the NPRM, would be unwieldy, time consuming, and costly and unlikely to meet the 1996 Act's specific and predictable standard. Therefore, we propose use of a competitive bidding process to ensure the lowest possible rate for services to schools in lieu of the suggested discount methodology. In order to minimize the required funding and ensure the most efficient outcome, a competitive bidding process should be established whereby each provider would bid to provide the specific services sought by the purchasing entity (or mandated by the Commission). As long as the low bid represents a discount off the otherwise prevailing market prices, the requirements of the 1996 Act would be met. The lowest bidder, consistent with required quality and performance levels, would become the provider of services with no entitlement to a subsidy. This approach has major benefits in ease and economy of administration, and is pro-competitive, ensuring that the benefiting institutions have maximum choice.

To ensure that the requested services will be used for their intended purpose, we think the proposal for a written certification stating that the requested services are used solely for the

purposes permitted by the Act by the parties permitted to use them will suffice. It is the least regulatory approach the Commission could adopt. Certification would also help ensure that services are not sold, resold or otherwise transferred for anything of value. In the case of a shared network, the Commission could require that, to the extent a network is shared with parties not eligible for support, those parties should pay a pro-rata share of the network costs (whether recurring or non-recurring) based on the non-discounted prices of those network costs.

If a requesting entity violates the terms of its certification, the service provider should be permitted to discontinue the service or discount. The recommendation to inform each school and library annually in general terms of available discounts is acceptable and will probably become a routine part of marketing. The Commission's proposal that any person qualified under state or local law to order telecommunications services for schools or libraries would be deemed capable of making a "bona fide" request is also reasonable.

Finally, the NPRM seeks comment on what entities should be eligible for "school" and "library" support. The statutory definitions answer this question. As for the level of discount, state commissions will generally be in the best position, other than the serving carriers themselves, to determine the level at which services have been discounted. The state commissions may require or request that service providers provide information as to their own determination of the required offset; however, this information alone should not serve as the basis for support because of the obvious incentive for abuse. Rather, the state commission should perform an independent analysis of the required offset. An annual determination should be frequent enough to allow for changed circumstances while infrequent enough to minimize the required state commission analytical resources. Moreover, after the first annual determination, subsequent determinations should require only minimal additional analysis.

B. Health Care Providers

As for services for health care providers, we believe they too should receive the core services defined for universal service support earlier. Those services plainly are “necessary for the provision of [rural] health care services.” However, we do not believe additional services meet each and all of the statutory criteria for inclusion and therefore none should be designated at this time. NCTA is not in a position to propose descriptions of the kinds of additional telecommunications services that are “necessary for the provision of [rural] health care services.” However, if and when additional services are designated for support, any proposed services should be competitively and technologically neutral (i.e., if broadband services with a certain bandwidth are required, providers should have the option to provide the service through various architectures, and potentially obsolete technologies such as ISDN should not be mandated). In addition, the Commission should first rely on competitive bidding processes to determine the provider of such services, before requiring the provider of last resort or other provider to make available services at the required “reasonably comparable” rates.

For purposes of determining whether a particular health care provider “serves persons who reside in rural areas” and identifying the “urban areas” in that state for purposes of establishing “reasonably comparable” rates, adoption of the existing HRSA classification system, as suggested in the NPRM, may be appropriate. However, the definition of rural versus urban should be consistent with the definitions adopted in response to other sections of the 1996 Act. Rural areas are defined in terms of both rural telephone companies and rural cable systems. In defining rural areas for the purpose of determining the areas served by health care providers, the Commission should take into account whether the area is served by small rural telephone companies or rural cable systems. Such a definition would be based on publicly available data

and could be easily administered since the Commission is charged with making the same determination relative to telephone companies and cable systems.

We agree that the Commission should adopt guidelines for telecommunications carriers to follow in establishing rates “that are reasonably comparable to rates charged for similar services in urban areas in [their] state.” Compliance with those guidelines should be a condition of carrier eligibility to receive support for services provided to rural health care providers.

As for the methodology for determining “reasonably comparable” rates, rather than determining some type of average of urban rates, the comparison should be based on the nearest urban area, or perhaps two urban areas. To minimize the administrative burden, the telecommunications carrier should submit sufficient, but concise, information to demonstrate that the rates it charges to the rural health care providers it serves are reasonably comparable to rates charged by the same or other carriers serving health care providers in the nearby urban area(s). This information can be based on publicly available tariff data or other data as may be appropriate. Reasonable comparability could be based on a price ceiling relative to the rates charged for similar services in urban areas. For example, if rates were no more than 10% higher than in urban areas, they could be considered reasonably comparable.

For purposes of determining credits or reimbursements for providing services to rural health care providers, there must be a comparison between the rates charged to rural health care providers and the rates charged to “other customers” in comparable rural areas of the state. A comparison to tariffed rates if available (in particular those of the telecommunications provider offering the service in question) would be the simplest administratively. If such a comparison is not possible, either because such services are not tariffed or if this scheme seems to incent strategic tariffing to game the system, the more appropriate comparison would be to nearby rural areas, rather than to a statewide average. Reliance on a state commission analysis may prove